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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

In re the Marriage of JEAN and PATRICE
DE SAINT ANDRIEU.

PATRICE DE PAOLA,

Respondent,

v.

JEAN DE SAINT ANDRIEU,

Appellant.

A152447

(San Mateo County
Super. Ct. No. FAM 090749)

The trial court denied Jean de Saint Andrieu’s (Husband) March 2017 motion to set aside support orders entered between 2010 and 2016. Husband appeals in propria persona. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND¹

In May 2008, the court entered a marital dissolution judgment. In November, the court issued a permanent child and spousal support order, ordering Husband to pay Wife child and spousal support. The court modified the support order in October 2010 and

¹ We incorporate our opinion in Husband’s prior appeal, *In re Marriage of De Saint Andrieu* (Oct. 31, 2013, A137006) [nonpub. opn.] We recite only those facts necessary to resolve the issues on appeal, but note Husband has been convicted of contempt for failure to comply with child and spousal support orders. The trial court observed Husband has “a pattern of failing to pay Court-ordered support, despite his considerable earnings,” has “failed to accept and follow court orders,” and has used the “judicial process to harass” Patrice De Paola (Wife). We refer to trial court rulings using the dates the orders are file stamped.

April 2012. Thereafter, Husband moved to set aside those orders, and “all the judgments” from 2007 to 2012. The court denied the motions. Husband appealed, and we affirmed. (*In re Marriage of De Saint Andrieu, supra*, A137006.) In January 2016, the court reduced child support. Several months later, the court suspended spousal support. In June, the court terminated spousal support.

March 2017 Motion to Set Aside Support Orders

In March 2017, Husband moved to set aside all support orders issued from 2010 to 2016. Husband argued Wife failed to disclose \$443,040 in “ ‘trust’ and ‘interest and dividend’ income” she received in 2013 and 2014, in violation of the “disclosure requirements” of Family Code section 2100.² Husband urged the court to set aside the support orders pursuant to section 2122, arguing Wife’s failure to disclose this income “resulted in support awards that were inappropriate [and] far larger than would have been made if the court had been able to consider the undisclosed income and assets.” Husband averred he learned about this “previously undisclosed” income in April 2016.

In opposition, Wife denied “defrauding [Husband] about [her] income and assets,” and claimed she accurately completed her income and expense declarations. Wife also stated she had no continuing obligation to provide Husband with “any financial information post judgment.” Next, Wife argued Husband’s attempt to “relitigate” his motions to set aside the October 2010 and April 2012 support orders was “barred by res judicata.” Finally, Wife urged the court to dismiss the motion as untimely, noting: “[a]lthough [Husband] brought his motion to set aside under [section] 2122, it should have been filed pursuant to [section] 3691 which . . . applies to ‘an action or motion to set aside a support order, while section 2122 applies to “a motion to set aside a judgment.” ’ ” Husband’s reply reiterated his contention that Wife had a “continuing duty” to disclose changes to her income, and that he was entitled to relief under section 2122. (Italics omitted.)

Order Denying the Motion

² Undesignated statutory references are to the Family Code.

In July 2017, the court denied the motion. It noted the dissolution judgment was entered in May 2008, “with orders re support related to the Judgment filed November 6, 2008.” The court characterized Husband’s request to set aside the October 2010 and April 2012 support orders as “meritless,” and barred by res judicata. Next, it determined Husband received documentation regarding the 2013 and 2014 income no later than April 2016, and the “statute of limitations . . . to request the orders be set aside began to run on that date.” Finally, the court concluded the “support orders issued post-judgment fall under the jurisdiction of [section] 3691, and [Husband’s] requests are barred by the six-month statute of limitations.”

DISCUSSION

We address Husband’s claims on the merits and conclude the court properly denied his motion to set aside the support orders. (*In re Marriage of Zimmerman* (2010) 183 Cal.App.4th 900, 906 (*Zimmerman*).)

Husband contends the support orders issued between 2010 and 2016 should have been set aside because Wife violated her “continuing duty” under section 2100 to “disclose events that substantially increased her previously reported income.” We disagree. “Section 2100 states: ‘[A] full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest must be made in the early stages of a proceeding for dissolution of marriage [E]ach party has a continuing duty to immediately, fully, and accurately update and augment that disclosure to the extent there have been any material changes so that at the time the parties enter into an agreement for the resolution of any of these issues, or at the time of trial on these issues, each party will have a full and complete knowledge of the relevant underlying facts.’ ” (*In re Marriage of Prentis-Margulis & Margulis* (2011) 198 Cal.App.4th 1252, 1270, italics omitted.) Section 2102, subdivision (c) extends the disclosure duty until “the date of a valid, enforceable, and binding resolution of all issues relating to child or spousal support.”

The disclosure duty described above does not—as Husband claims—continue beyond entry of a final support order in a marital dissolution. (*In re Marriage of Sorge*

(2012) 202 Cal.App.4th 626, 633, 654–655 (*Sorge*).) *Sorge* is instructive. In that case, the divorce decree ordered husband to pay child support. (*Id.* at p. 633.) Several years later, wife moved to modify child support. (*Id.* at p. 634.) The trial court granted the motion and concluded husband had a fiduciary duty—pursuant to section 2102—“to disclose material information pertaining to his income and expenses even after the . . . divorce decree was entered.” (*Sorge*, at p. 650.) The court sanctioned husband for “breach[ing] his fiduciary duties to [wife] by failing to disclose material changes to his income, beginning in 2006 and continuing throughout the litigation.” (*Id.* at p. 636.)

The appellate court reversed. (*Sorge, supra*, 202 Cal.App.4th at p. 633.) It held the divorce decree was a final determination regarding the support and maintenance of the children, and that after entry of that “final support order,” husband was “no longer required to disclose ‘all material facts and information regarding [his] income or expenses’ . . . pursuant to section 2102, subdivision (c).” (*Id.* at p. 658.) *Sorge* held section 2102 “does not impose on divorced parties a continuing fiduciary duty to disclose all material facts regarding a party’s income after a final custody and support order has been entered.” (*Sorge*, at pp. 654–655.) The *Sorge* court observed, “[d]espite the fact that a final child support determination is never truly ‘final’ or ‘permanent,’ in the sense that it may always be modified at the request of a party who can demonstrate that changed circumstances justify a modification, for purposes of section 2102, subdivision (c), a child support order that the parties and/or the court indicate is not intended to be temporary (or interim or pendente lite) should be considered to be the final ‘resolution of all issues’ related to child support. Thus, once a final order of child support has been entered in a dissolution case, the parties are no longer” required to provide “‘immediate, full, and accurate disclosure of all material facts and information regarding the income or expenses of the party.’”³ (*Id.* at p. 657.)

³ “[S]ection 3660 et seq. sets out a framework for the exchange of financial information between parties whose dissolution proceedings are final.” (*Sorge, supra*, 202 Cal.App.4th at p. 656.) Section 3664 allows a party subject to a child support order to “make an annual request for a declaration of income and expenses from the other

The same is true here. In November 2008, the court issued a permanent child and spousal support order. As in *Sorge*, that order was “final” because it resolved all issues related to spousal and child support. After entry of that order, Wife no longer had a duty under sections 2100 or 2102 “to disclose all material facts regarding [her] income.” (*Sorge, supra*, 202 Cal.App.4th at pp. 654–655.) Husband has not persuaded us *Sorge* is distinguishable or wrongly decided.

Husband also argues the support orders should have been set aside because Wife’s failure to disclose the income violated section 2122. We disagree. “Section 2122 sets out the exclusive grounds . . . for an action or motion to set aside a *marital dissolution judgment*.” (*In re Marriage of Rosevear* (1998) 65 Cal.App.4th 673, 684, italics added.) The statute applies to motions to set aside marital dissolution judgments, not motions to set aside support orders. (*Zimmerman, supra*, 183 Cal.App.4th at p. 910; Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2018) ¶ 16:101.2, p. 16-30 [motions to set aside support orders “are governed by other statutes”].) Here, Husband sought to set aside support orders, not the dissolution judgment. As a result, section 2122 did not provide a recourse for Wife’s alleged nondisclosure.⁴ (See *Zimmerman*, at p. 910 [wife erroneously relied on section 2122 in seeking to set aside post-judgment support orders based on husband’s alleged fraudulent concealment of income].) Husband’s reliance on *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131—which concerned a motion to set aside a dissolution judgment—does not alter our conclusion, and his characterization of the support orders as “judgments” is unavailing.

party.” The enactment of section 3664 makes it clear “the Legislature did not intend for divorced parties to continue to owe each other the same fiduciary duty to disclose all material changes in income . . . simply because the parties share a child together and an order for the support and maintenance of that child remains in effect.” (*Sorge*, at p. 656.) Section 3664 is not—as Husband claims—“woefully inadequate.”

⁴ One ground for relief under section 2122 is “[f]ailure to comply with the disclosure requirements” in section 2100, et seq. (§ 2122, subd. (f).) But as discussed above, Wife had no disclosure duty under section 2100 after entry of the permanent support order in November 2008.

Husband might have had a remedy under section 3691, which “allows the trial court to set aside the order where one party has committed perjury or ‘fraudulently prevented’ the other party ‘from fully participating in the proceeding’ to determine support,” or where there has been a lack of notice. (*In re Marriage of Tavares* (2007) 151 Cal.App.4th 620, 626–627; § 3691, subd. (c).) In any event, Husband was not entitled to relief under section 3691 because he filed the set aside motion more than six months after learning of Wife’s alleged nondisclosure. (*Zimmerman, supra*, 183 Cal.App.4th at p. 910; *In re Marriage of Tavares*, at p. 627.)

A determination that Husband could have sought relief under section 3691 does not, as Husband argues, contravene our prior opinion. In his prior appeal, Husband challenged the court’s denial of his motion to set aside support orders, brought pursuant to section 2122. Wife moved to dismiss, claiming Husband had sought relief under the “wrong statute,” i.e. section 2122, rather than section 3691. We declined to dismiss the appeal for that reason, noting Wife did not cite any authority for dismissal in such circumstances, and that she had not raised that argument in the trial court. We had no occasion to consider whether Husband’s previous motion should have been brought pursuant to section 3691.

We conclude the court properly denied Husband’s motion to set aside the support orders at issue. Having reached this result, we need not address Husband’s contention that the court erred by determining res judicata barred his request to set aside the October 2010 and April 2012 orders. Husband’s “remaining arguments have been considered and merit no further discussion.” (*Lyons v. Santa Barbara County Sheriff’s Office* (2014) 231 Cal.App.4th 1499, 1506.)

DISPOSITION

The July 2017 order denying Husband’s motion to set aside the support orders is affirmed. Wife is entitled to costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

Jones, P.J.

We concur:

Simons, J.

Burns, J.

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